

TOBEROFF

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March 26, 2025

Via ECF

Hon. Jesse M. Furman
United States District Judge
United States District Court for the
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

**RE: Letter Motion for Leave to File Document in *Peary v. DC Comics, et al.*,
No. 1:25-cv-00910-JMF**

Dear Judge Furman:

Plaintiff submits this letter motion for leave to file a document necessary to correct the record on Defendants' Motion to Dismiss or Transfer Venue, Dkt. 30, with the Supplemental Declaration of Marc Toberoff and accompanying exhibits. Defendants' Reply contains new and false statements of fact that may bear on the Motion's resolution. Dkt. 40. Recognizing that sur-replies are disfavored, Plaintiff does not engage Defendants' (numerous) errors of law and limits this correction solely to these matters of historical fact that objective evidence shows Defendants know to be untrue.

1. "In 2003, Peary initiated probate proceedings in Los Angeles Superior Court to replace his mother as executor of Shuster's estate (without her knowledge)." Reply at 7.

Correction: As Defendants well know, Jean Peavy was *never* executor of Shuster's Estate; she affirmatively declined to serve as executor and she voluntarily waived even her right to receive notice. Toberoff Decl. Ex. 1 at 1-2, Ex. 2 at 1-2, Ex. 3 at 4.

2. "Peary argues DC initiated that litigation, but omits that he never, in six years, argued venue was improper in Los Angeles—and cannot belatedly do so now." Reply at 7.

Correction: As Defendants know, they chose to bring their prior action in the Central District of California regarding termination rights under the *U.S. Copyright Act*. Accordingly, venue in that case was governed by and permissible under a different and considerably broader provision, 28 U.S.C. § 1400(a), which Peary did not contest for that reason.

3. “Toberoff omits that his joint venture agreement with Peary—formed ‘for the purpose of retrieving, enforcing and exploiting’ Shuster’s rights in Superman—required that Toberoff’s Los Angeles-based company cover Peary’s travel costs.” Reply at 8.

Correction: As Defendants well know, Plaintiff’s counsel voluntarily replaced a prelitigation joint venture agreement with a legal retainer agreement more than a decade ago. Toberoff Decl. Ex. 4 at 1, Ex. 5 at 7 (¶ 28).

4. While it would not bear independent mention, Defendants’ volunteering of counsel’s supposed “guest house” (in fact, a guestroom) in his family home also misleads. The room is unusable after water damage from a burst pipe. Toberoff Decl. ¶ 7. Counsel has prioritized the replacement of his law office, which was completely destroyed in the Palisades Fire on January 8, 2025. *Id.* ¶ 8.

Wherefore, it is respectfully requested that the Court grant leave to supplement the record with the Supplemental Declaration of Marc Toberoff and accompanying exhibits.

Respectfully submitted,

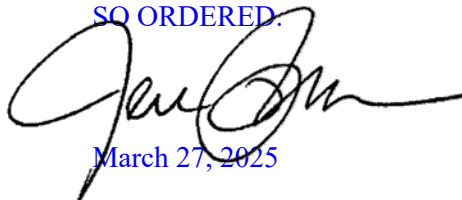


Marc Toberoff

*Attorneys for Plaintiff Mark Warren Peary,
individually and as executor of the Estate of
Joseph Shuster*

The Court will consider this submission (and, in that event, Defendants' response of earlier today, *see* ECF No. 43) to the extent that it responds to new arguments or issues raised in the reply. The Clerk of Court is directed to terminate ECF No. 42.

SO ORDERED.



March 27, 2025